

Introduced by Senator Hueso

February 27, 2015

An act to add Section 686.3 to the Penal Code, relating to criminal proceedings.

LEGISLATIVE COUNSEL'S DIGEST

SB 603, as introduced, Hueso. Defendant: acting as his or her own attorney (in pro per).

The California Constitution provides that a victim of crime is entitled to be treated with fairness and respect for his or her privacy and dignity throughout the criminal justice process. Existing law also provides that in a criminal action the defendant is entitled to appear and defend in person and with counsel, except as specified, and to confront the witnesses against him or her.

This bill would require a court to conduct a hearing to determine whether intermediary standby counsel shall be appointed, at county expense, for the limited purpose of presenting the defendant's examination of the victim, upon a motion by the prosecutor, at the request of a victim, or upon the court's own motion, if a defendant is acting as his or her own attorney in the proceeding and if the victim's testimony will involve a recitation of the facts of one of specified alleged felony offenses committed against the victim, including violent felonies and felony offenses for which a convicted defendant is required to register as a sex offender. The bill would require the hearing on the motion to be conducted outside the presence of the jury and would provide that the hearing shall not require the testimony of the victim. The bill would authorize the court to appoint intermediary standby counsel if the court makes specified findings, including that the denial of the defendant's personal examination of the victim, and the use of

intermediary standby counsel to present the defendant's examination of the victim, is necessary to protect the victim from trauma, as specified. The bill would also exempt the appointed intermediary standby counsel from sanctions and from liability in an action for malpractice brought by the defendant against that counsel for his or her service in that capacity, as specified. By imposing a higher level of service on counties, the bill would impose a state-mandated local program. The bill would also include legislative findings and declarations and a statement of legislative intent.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 686.3 is added to the Penal Code, to read:
- 2 686.3. (a) The Legislature hereby finds and declares all of the
- 3 following:
- 4 (1) Sexual abuse, child abuse, stalking and violent crimes are
- 5 some of the most difficult crimes to detect and prosecute, in large
- 6 part because there are often no witnesses except the victim, and
- 7 because of the extreme psychological harm to the victims. Victims
- 8 of sex crimes, child abuse, stalking and other violent crimes have
- 9 a right to be protected from further victimization by the alleged
- 10 perpetrator of the crime. These victims have constitutional rights,
- 11 as enumerated in Marsy's Law, to be treated with fairness and
- 12 respect for their dignity, to be free from intimidation, harassment,
- 13 and abuse throughout the criminal justice process, and to be
- 14 reasonably protected from the defendant.
- 15 (2) A defendant generally has the right to represent himself or
- 16 herself in a criminal proceeding, and the right to confront his or
- 17 her accusers in court. However, courts have held that this right is
- 18 not absolute, and where the reliability of the testimony is otherwise

1 ensured, the defendant's rights may be outweighed by important
2 public policy concerns.

3 (3) Courts are entitled to control the mode of witness
4 interrogation, so as to more effectively ascertain the truth and
5 protect the witness from harassment or further trauma. Courts have
6 held that a state's interest in the physical and psychological
7 well-being of victims and witnesses may be sufficiently important
8 to outweigh, in some cases, a defendant's right to face his or her
9 accuser or accusers in court.

10 (4) The state has a compelling interest in protecting the physical
11 and psychological well-being of victims of sex offenses, child
12 abuse, stalking and other violent crimes.

13 (b) It is the intent of the Legislature in enacting this section to
14 provide the court with authority to employ alternative court
15 procedures to protect the rights of victims of an alleged sexual
16 assault, child abuse, stalking and other crimes described in
17 subdivision (c), so the victims are able to participate truthfully and
18 effectively in criminal proceedings when the alleged perpetrator
19 is acting as his or her own attorney, which is also referred to as
20 acting in pro per. In exercising its authority, the court shall balance
21 the rights of the defendant against the need to protect victims of
22 those crimes and to preserve the integrity of the court's
23 truth-finding function. This authority is intended to be used
24 selectively when the facts and circumstances in the individual case
25 present compelling evidence of the need to use these alternative
26 procedures.

27 (c) Notwithstanding any other law, if the defendant is acting as
28 his or her own attorney, the court, upon a motion by the prosecutor,
29 at the request of a victim, or upon the court's own motion, shall
30 conduct a hearing to determine whether intermediary standby
31 counsel, shall be appointed, at county expense, for the limited
32 purpose of presenting the defendant's examination of the victim.
33 The court may order intermediary standby counsel if the court
34 makes all of the following findings:

35 (1) The victim's testimony will involve a recitation of the facts
36 of any of the following alleged offenses committed against the
37 victim:

38 (A) A felony offense that is subject to sex offender registration
39 pursuant to Section 290.

1 (B) A violent felony, as defined in subdivision (c) of Section
2 667.5.

3 (C) Felony stalking pursuant to Section 646.9.

4 (D) Felony elder abuse pursuant to Section 368.

5 (E) Felony domestic violence pursuant to Section 273.5.

6 (F) Felony child abuse pursuant to Section 273a, 273ab or 273d.

7 (2) The prospect of the defendant personally presenting the
8 examination of the victim creates an emotionally traumatic situation
9 for the victim that is more than de minimis.

10 (3) The denial of the defendant's personal examination, and the
11 use of intermediary standby counsel to present the defendant's
12 examination of the victim, is necessary to protect the victim from
13 that trauma.

14 (d) The hearing on the motion pursuant to subdivision (c) shall
15 be conducted outside the presence of the jury and shall not require
16 the testimony of the victim. The court's findings pursuant to
17 subdivision (c) may be established by evidence of the facts of the
18 underlying incident, the defendant's subsequent behavior, and
19 through witnesses including, but not limited to, the victim, victim
20 advocate, therapist, counselor, parent, or family member.

21 (e) If the victim testifies at the hearing brought pursuant to
22 subdivision (c), the questioning of the victim shall be conducted
23 by the court. The prosecutor and defendant shall be permitted to
24 submit proposed questions to the court prior to the hearing.

25 (f) When the court orders intermediary standby counsel to
26 present the examination of the victim pursuant to this section, the
27 court shall do all of the following:

28 (1) Make a brief statement on the record, outside the presence
29 of the jury, of the reasons in support of its order. The reasons shall
30 be set forth with sufficient specificity to permit meaningful review
31 and to demonstrate that discretion was exercised in a careful,
32 reasonable, and equitable manner.

33 (2) Instruct the jury that although intermediary standby counsel
34 is presenting the defendant's questions of that witness, the
35 defendant is continuing to represent himself or herself, and that
36 the jury is to draw no negative inferences against the defendant
37 from the use of intermediary standby counsel to facilitate the
38 examination of that particular witness or to speculate as to the
39 reasons for intermediary standby counsel's participation.

1 (g) When the court orders the examination of the victim be
2 presented by intermediary standby counsel, the defendant shall
3 submit the entire line of questioning to intermediary standby
4 counsel, including any follow-up questions, and have the right to
5 contemporaneously direct intermediary standby counsel during
6 the examination to ensure the defendant maintains control of his
7 or her defense. The defendant shall remain personally subject to
8 court procedures and the rules of evidence.

9 (h) The appointed intermediary standby counsel who performs
10 merely as the presenter of the defendant's proposed examination
11 of the victim pursuant to this section shall not be subject to
12 sanctions for presenting the defendant's proposed examination.
13 The appointed intermediary standby counsel shall not be subject
14 to liability for malpractice for presenting the defendant's proposed
15 examination in an action brought by the defendant against that
16 counsel for his or her service in that capacity.

17 SEC. 2. If the Commission on State Mandates determines that
18 this act contains costs mandated by the state, reimbursement to
19 local agencies and school districts for those costs shall be made
20 pursuant to Part 7 (commencing with Section 17500) of Division
21 4 of Title 2 of the Government Code.